

Finding of No Significant Impact

Issuance of a Permit under section 10(a)(1)(B) of the Endangered Species Act to Maine Department of Inland Fisheries and Wildlife

The U. S. Fish and Wildlife Service (Service) proposes to issue an incidental take permit to the Maine Department of Inland Fisheries and Wildlife (MDIFW) in association with the implementation of an Incidental Take Plan (ITP) for the federally threatened Canada lynx (*Lynx canadensis*). The MDIFW is the state agency responsible for the protection and enhancement of the state's inland fisheries and wildlife and provides for the use of these resources for current and future generations. In 1973, the MDIFW was granted authority from the state legislature to establish trapping programs and seasons for furbearing animals. The MDIFW submitted an updated application section 10(a)(1)(B) permit under the Endangered Species Act (ESA) on June 30, 2014 and a final ITP on October 28, 2014 to the Service. The intent of this permit is to provide statewide protection to trappers in the event that Canada lynx are incidentally trapped in lawfully set traps during Maine's legal trapping season, and through animal damage control (ADC), or predator management (PM) activities. This permit will cover individuals that hold a valid Maine trapping license (licensee) or those permitted to trap, including ADC and PM trappers.

The MDIFW requests statewide coverage for the incidental take of up to 195 Canada lynx over a 15-year period. Of these 195 lynx, the MDIFW is requesting take coverage for up to 183 lynx that may be incidentally captured and released with no or only minor injuries, up to nine lynx that may be incidentally captured and released after treatment for more severe injuries, and up to three lynx that may be captured and either killed or made non-releasable due to the severity of capture-related injuries. The ITP describes measures that the MDIFW will implement to avoid, minimize, mitigate, and monitor the potential effects to the Canada lynx. Changed circumstances provide contingencies that will be used if the number of lynx taken exceeds the allowance in the permit, injuries are more severe than expected, new trapping technology becomes available, compliance with regulations is less than expected, possible declines in the lynx population occurs, and failure of the mitigation takes place. The MDIFW proposes to mitigate for the lethal take of three lynx by creating or maintaining 6,200 acres of high quality lynx foraging habitat (i.e., high quality hare habitat) on 22,046 acres of the Maine Department of Parks and Public Land's Seboomook Unit.

As part of the evaluation of whether to issue an incidental take permit, the Service is required to analyze the effects of permit issuance in accordance with the National Environmental Policy Act of 1969 (NEPA). To comply with NEPA, the Service prepared an environmental assessment (EA) that evaluates the potential direct, indirect, and cumulative effects of the proposed action (i.e., issuance of an incidental take permit with implementation of the ITP), two status quo (no action) alternatives, and an alternative that permits incidental take of lynx only for the MDIFW's recreational fur trapping program (not the PM or ADC programs).

The environmental effects of the proposed action were considered in the final EA and were demonstrated to be minor and insignificant to the human environment (40 CFR 1508.27). The MDIFW anticipates that most Canada lynx incidentally captured will be released with little or no injuries, lethal take will be minimal, resulting in minimal effects to the lynx population. The MDIFW believes that incidental trapping of migratory birds (e.g., corvids and raptors) and non-furbearing mammals (e.g., snowshoe hare, flying squirrels, porcupines, deer and moose) will be minimal and not at levels expected to affect these species' populations. Effects of the proposed action on outdoor recreation and socioeconomic factors will be minimal. There will be little change to the MDIFW's trapping programs and commitments in the plan will have little effect on Maine trappers because the MDIFW has implemented the measures in the Consent Decree since 2007 and made other adjustments to their trapping programs to minimize take and evaluate injury of lynx. Mitigation will affect forest vegetation on the Seboomook Unit, resulting in a

long-term reduction of mature conifer-dominated forest and the species that depend on this habitat (e.g., American marten and wintering white-tailed deer). As described in the final EA, trapping under an incidental take permit is not anticipated to significantly affect other aspects of the human environment (e.g. land use, geology and soils, wetlands, cultural resources, etc.).

Based on review of all the effects described in the final EA and the Council on Environmental Quality guidance on determining significance (40 CFR 1508.27(b)(1) through (10)), the Service concludes that an EA is the appropriate instrument for this project. The Service made this determination because the effects of the proposed action:

1. Do not include any significant beneficial or adverse impacts. The EA includes a description of the expected environmental consequences of Maine's trapping programs;
2. Do not significantly affect public health or safety;
3. Do not affect historical or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas;
4. Are not likely to be highly controversial;
5. The effects of the proposed action are not highly uncertain nor do they involve unique or unknown risks;
6. Do not establish a precedent for future actions with significant effects or represent a decision in principle about a future consideration;
7. Are not related to other actions with individually insignificant, but cumulatively significant impacts;
8. Will not adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or cause loss or destruction of significant scientific, cultural, or historical resources;
9. Do not adversely affect the Canada lynx or its critical habitat to a significant degree; and
10. Do not threaten a violation of Federal, State, or local law or requirements imposed for the protection of the environment.

A notice of availability for a draft EA and ITP application was published in the Federal Register on November 8, 2011 for a 90-day comment period, and the Service received about 6,300 individual comments. A revised draft EA and ITP application were published in the Federal Register on August 6, 2014, for a 30-day supplemental public comment period. During this time, the Service received about 5,400 individual comments. Responses to public comments on both draft EAs are included in the final EA.

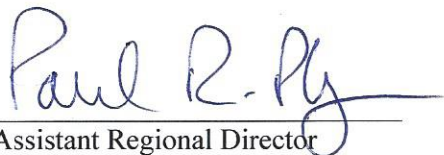
Some of the comments that the Service received on the draft and final EA suggested that the proposed action (i.e., the Service's issuance of an incidental take permit) triggers several significance factors including the effects are likely to be highly controversial, the effects will involve unique or unknown risks, the proposed action establishes precedence for future actions with significant effects, and that issuing a permit in combination with other factors will have cumulatively significant impacts. The Service does not agree for the following reasons. First, while the Service acknowledges that trapping is an activity that is controversial in the sense that there is much public debate for and against the activity, we do not believe that the effects of issuing an incidental take permit or the manner in which uncertainty is dealt with in the plan is controversial. Nor do the effects involve unique or unknown risks. The anticipated effects of the permit are well understood and thoroughly analyzed in both the ITP and EA based on available data specific to trapping in Maine. The effects are bounded by the authorized incidental take, with specific changed circumstances triggers that allow the plan to adapt to new or additional information that becomes available through the ITP implementation process. Therefore, impacts of the conservation strategy are appropriately limited (by the take authorization) and bracketed

(by the changed circumstance triggers) to ensure the conservation plan is successful at avoiding, minimizing, and mitigating the impacts of the take anticipated from this project.

Second, the Service does not agree that issuing an incidental take permit for trapping is precedential. Many of the conservation measures that the MDIFW will be implementing through this ITP are the same as they have been implementing since 2007 under the Court-ordered consent decree. The ITP incorporates a number of measures that further those efforts and make them even more effective, but the underlying avoidance and minimization measures are not new or novel. The mitigation is also not new or novel and follows the Service's forest management guidelines for landowners in Maine. Therefore, the ITP does not set precedence in terms of the conservation strategy. Issuing an incidental take permit to the MDIFW also does not set precedence for other states. Other states or regulated entities could not implement the MDIFW plan without making a number of changes to adapt the plan to that state's laws and regulations. Each plan would have to be specific to the laws and regulations in place for each state and the specific trapping techniques and covered species being considered. Like any other plan or HCP, other entities will look to this one for examples of how issues were addressed or described, but that alone does not make a plan precedent setting. Also, we noted in the final EA that the Service has issued other ESA take exemptions (e.g., section 7) for trapping related activities, so considering take exemptions for trapping is also not precedential.

Finally, the environmental effects were comprehensively described in the EA and were determined to be minor and insignificant to the human environment. The analysis assessed the full range of direct, indirect, and cumulative environmental consequences of the proposed action and alternatives. In terms of cumulative impacts, we examined factors that will have the greatest influence on northern Maine's forest in lynx occupied areas over the next 15 years (the duration of the incidental take permit) include changing land ownership patterns, changing forest practices, energy-related development, residential and resort development, and climate change. The final EA showed that with respect to cumulative impacts, the incremental effects of trapping over the 15-year life under any of the alternatives analyzed in this FEA (including the proposed action) were negligible.

Based on review and evaluation of the attached final EA and supporting documents, the Service has determined that the action is not a major Federal action that would significantly affect the quality of the human environment, pursuant to the provisions of section 102 (2)(c) of the NEPA. As a result, the preparation of an environmental impact statement for the proposed action is unnecessary.



Assistant Regional Director
Northeast Region

11/4/14
Date